

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

POLICE OFFICER MICHAEL A. CHRISTY,	:	
POLICE OFFICER RAYMOND SCHAEFER,	:	
POLICE OFFICER JUSTINE BRANHAM,	:	
DETECTIVE MANUEL REBELO,	:	
DETECTIVE DOMINICK DiANDREA,	:	CIVIL ACTION
SERGEANT JAMES E. GEORGE,	:	
SERGEANT WILLIAM MEHALARIS,	:	No. 02-CV-4687 (DMC)
LIEUTENANT STEPHEN A. MEGNA and	:	
CAPTAIN RICHARD P. MAGUIRE, as	:	<b>SECOND AMENDED</b>
individuals and as party plaintiffs on behalf of all	:	<b>COMPLAINT</b>
other similarly situated individuals who may	:	
determine to join this action,	:	

and

FARUQ ABDULAZIZ,	:	
FERNANDO ACEVEDO SR.,	:	
JESUS ACHONG, ANTHONY AGUIAR,	:	
JACQUELINE AHLON, EDWARD ALFANO JR.,	:	
KEARY E. ALLEN, JOSE M. ALVAREZ,	:	
ARTHUR ALVARADO, JOAS AMARK,	:	
ILIA E. AQUINO, RON ARBUCKLE,	:	
ANTHONY ARCE, REINALDO AROCHA JR.,	:	
JULIO ARROYO, VIVIAN ARROYO,	:	
MARK D. AUSBY, JAVIER AVILES,	:	
MIGUEL AVILES, ANTONIO BADIM,	:	
HERIBERTO BALLESTER,	:	
FRANCISCO BANETO, JUAN BARRETO,	:	
RODNEY BARRON, BRIAN C. BARROQUIERO	:	
JOSE M. BARROS, JOIN BATISTA,	:	
KEVIN A. BATTIS, JOHN BAUMAN,	:	
MICHAEL BEASLEY, UGU BELLOMO,	:	
JOSE BELTRAM, SONNIE J. BERRIEUM JR.,	:	
TERRENCE C. BEST, JAMES G. BIRCSAK,	:	
ROCCO BONASSISA, REINALDO BOSQUE JR.,	:	
JEFFREY BOUIE, CHRISTOPHER A. BRARLES,	:	
KYLE P. BOWMAN, RONALD E. BOYCE,	:	
ANGELA BRADLEY,	:	
JUSTINE BRANIEM, PAUL BRASWELL,	:	
ZAID A. BRASWELL, LEONARD BREAUX,	:	
SABRINA A. BRISON, ERIC BROWN,	:	
KAREN M. BROWN, ROCCO BUGLIOMO,	:	

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ANGELO SCIARA,JOSEPH ALFIERI JR., :  
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SGT. ADOLPH VAZQUEZ,GARY S. VICKERS, :  
ROBERT WISE,SGT. JOHN ZUTIC, :  
VINCENT PABON, PORTIA ALLEN, :  
CHRISTOPHER BROWN, :  
ONOFRE H. CABEZAS,VIRGILIO CARDONO, :  
STACY J. CONLEY,FRANCO DIPAOLO, :  
MADELINE GAETA,ERIK A. GERAUD, :  
MARISOL GONZALEZ,KEITH L. HOPKINS, :  
JOHN JEWELL,ALAN MARFIA, :  
SHAKOOR A. MUSTAFA,SAMUEL NIEVES, :  
TEASLA L. REYNOLDS,JESUS RIVAS, :  
FRANK REISIGNUOLO,RAYMOND VELEZ, :  
JOSEPH H. WALLACE,DOUGLAS BARNES, :  
THOMAS J. WATERS, MARK RICCARDI, :  
CARLOS ROMAN, JOHN M. NUNN, :  
LT. TIM MAGUE, DAVID ALLEN, :  
MICHAEL GILLENS, GEORGE AUBERTO, :  
ARTHUR JORGE, JAMES ARROYD, :  
TONY M. BROWN, DINO A. D'ELIA, :  
DOMENICK CARUSO, :  
:

NORBERTO SOARES, JIMMY L. MCCOY, :  
RICHARD MILLER, :  
HECTOR RODRIGUEZ, JR., :  
ELARO RUIZ, A. ZAMONA, :  
RYAN O'NEILL, ROBERT M. BERGER, :  
FRANK J. LEONARDIS, J. TAVARES, :  
JOSE L. PEREZ, ANTHONY T. SIMMONS, :  
JOSE E. BRANQUINHO, :  
BARBARA J. GILBERT, KEVIN HERDER, :  
ROSA RIVAS, EFRAIN VELAZQUEZ, :  
KENNEDY ALMEIDO, :  
ALOPHONSO A. CARUSO, :  
MICHELLE ANN COTE, EDWIN GONZALES, :  
KEITH JONES, KEVIN L. MOORE, :  
MICHAEL NOEL, MICHAEL CLESS, :  
JESUS DELEON, GUADALBERTO FELICIANO, :  
JEFF W. HODGE, JOSE MARTINEZ, :  
RAMON L. NEGRON, WAYNE REYNOLDS, :  
OVIDIO VALENTIN, JOYCE BOSWELL, :  
JOYCE M. HILL-KENNEDY, ANDY JIMENEZ, :  
JULIAN JOVA, ALAN KNIGHT, :  
AL-TERIQUE WHITLEY, :  
WILLIAM RICHARDSON, :  
DAVID R. ADAMS, W. RIVERA, :  
RUBEN NAZARIO, DAVID LETTS, :  
ANTONIO ARMAND, JR., :  
MICHELE ARROYO, ANTONIO BARBOSA, :  
HILDA M. BERRY, DEXTER BRIGHT, :  
NANCY CABALLERO, :  
ROBERTO CARABALLO, EMIL CARDONA, :  
YOLANDA CASTRO, DENNIS K. DANIELS, :  
PAULETTE DENT, MICHAEL DIFABIO, :  
JOSE E. FABREGAS, ALFREDDY FLETCHER, :  
CHRISTOPHER M. FREESTONE, :  
CHERE M. GLOVER, JAMES E. GEORGE, :  
RONALD GIBSON, BEATRICE GOLDEN, :  
VICTOR GOMES, EFREN GONZALEZ, :  
FREDDIE HERNANDEZ, LESLIE KENTISH, :  
ISMAEL LESPIER, EUCLIDES LOPEZ, :  
MARILYN LOPEZ, SHARONDA MORRIS, :  
HECTOR MOYA, CESAR MUÑOZ, :  
OSWALD OSBOURNE, CARMEN A. PELOSE, :  
JOSEPH PENEVOLPE, JOSE L. PEREIRA, :  
EDNA M. PENEZ, SAMUEL D. SMITH, :  
RODNEY A. STEPHENS, KENT O. TORAIN, :  
ANGELO S. VECCHIONE, :

GENE A. VELLHIONE, JAMES P. WALSII,	:
SAMUEL WASHINGTON, CAROL WILLIAMS,	:
JOSE RUIZ, MICHAEL LEROUX,	:
TYRONE MORTON, MAE SMITH,	:
BETTY BURROWS, RENE LISOTO,	:
THOMAS CINQUE AND JOSE RUIZ	:
Plaintiffs,	:
v.	:
CITY OF NEWARK,	:
Defendant.	:
	JURY TRIAL DEMANDED

### **SECOND AMENDED COMPLAINT**

Plaintiffs bring this action to recover unpaid compensation, an additional amount equal to compensation due as liquidated damages, attorneys' fees and costs associated with this civil action and any and all other relief that may be appropriate pursuant to provisions set forth in the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201, *et seq.*, hereinafter referred to as the "FSLA" or the "Act."

### **JURISDICTION**

1. Jurisdiction is conferred on this court by Section 16(b) of the Act, 29 U.S.C. § 216(b) and 28 U.S.C. § 1337.

2. Venue is appropriate in the District of New Jersey pursuant to 28 U.S.C. § 1331(e). The plaintiffs are or were employed within this district, the defendant is located and may be served with process herein and all of the conduct that forms the subject matter of this action either took place or is taking place within this judicial district.

**PARTIES**

3. Each of the plaintiffs are, or were, employed on a full-time, non-voluntary basis with the Newark Police Department in "law enforcement" activities within the meaning of Section 7 of the Act, as amended, 29 U.S.C. § 207. Each plaintiff participates in this action as an individual and as a party plaintiff on behalf of all individuals who are similarly situated:

(a). Plaintiff Police Officer Michael A. Christy, # 5454, resides at 17 Bracmar Drive, Rockaway, NJ 07866. PO Christy was not paid compensation as required by the FLSA and believes and alleges that the City of Newark has failed to maintain the necessary records in order to ascertain the lawful amount of compensation due him. PO Christy represents all similarly situated plaintiffs.

(b). Plaintiff Police Officer Raymond Schaefer, #5492, resides at 464 Riverview Avenue, N. Arlington, NJ 07031. PO Schaefer is a retired police officer who, at the time of his retirement, was not paid compensation as required by the FLSA and believes and alleges that the City of Newark has failed to maintain the necessary records in order to ascertain the lawful amount of compensation due PO Schaefer at the time of his retirement. PO Schaefer represents all similarly situated plaintiffs.

(c). Plaintiff Police Officer Justine Branham, # 7947, resides at 109 Keer Avenue, Newark, NJ 07112. PO Branham was not paid compensation as required by the FLSA; was required to stand for roll call but was uncompensated for time so spent; was not permitted to utilize time from her FLSA "time bank" as described by the applicable collective bargaining agreement between the City of Newark and the Newark Fraternal Order of Police, Lodge No. 12 and as required by law; and PO Branham

believes and alleges that the City of Newark has failed to maintain the necessary records in order to ascertain the lawful amount of compensation due her. PO Branham represents all similarly situated plaintiffs.

(d). Plaintiff Detective Manuel Rebelo, # 5951, resides at 4 Juliet Court, Old Bridge, NJ 08857. Det. Rebelo was not paid compensation as required by the FLSA and believes and alleges that the City of Newark has failed to maintain the necessary records in order to ascertain the lawful amount of compensation due him. In addition, the City of Newark has failed to compensate Det. Rebelo for all hours worked in excess of those permitted to accumulate in his FLSA "time bank." Det. Rebelo represents all similarly situated plaintiffs.

(e). Plaintiff Detective Dominick DiAndrea, # 7068, resides at 30 Fox Chase Lane, Roxbury, NJ 07852. Det. DiAndrea was not paid compensation as required by the FLSA and believes and alleges that the City of Newark has failed to maintain the necessary records in order to ascertain the lawful amount of compensation due him. Det. DiAndrea represents all similarly situated plaintiffs.

(f). Plaintiff Sergeant James E. George, # 5712, resides at 91 Hazelwood Road, Bloomfield, NJ 07003. Sgt. George was not paid compensation as required by the FLSA; was not permitted to utilize time from accrued compensatory "time bank" as described by the applicable collective bargaining agreement between the City of Newark and The Police Superior Officers' Association of Newark, New Jersey, Inc. and as otherwise required by law; and Sgt. George believes and alleges that the City of Newark has failed to maintain the necessary records in order to ascertain the lawful amount of compensation due him. Sgt. George represents all similarly situated plaintiffs.

(g). Plaintiff Sergeant William Mehalaris, # 7131, resides at 174 Marion Drive, West Orange, NJ 07052. Sgt. Mehalaris was not paid compensation as required by the FLSA and Sgt. Mehalaris believes and alleges that the City of Newark has failed to maintain the necessary records in order to ascertain the lawful amount of compensation due him. Sgt. Mehalaris represents all similarly situated plaintiffs.

(h). Plaintiff Lieutenant Stephen A. Megna, # 6109, resides at 660 Bloomingdale Avenue, Kenilworth, NJ 07033. Lt. Megna was not paid compensation as required by the FLSA and Lt. Megna believes and alleges that the City of Newark has failed to maintain the necessary records in order to ascertain the lawful amount of compensation due him. Lt. Megna represents all similarly situated plaintiffs.

(i). Plaintiff Captain Richard P. Maguire, # 5845, resides at 17 Camelot Drive, West Milford, NJ 07646. Capt. Maguire was not paid compensation as required by the FLSA and Capt. Maguire believes and alleges that the City of Newark has failed to maintain the necessary records in order to ascertain the lawful amount of compensation due him. Capt. Maguire represents all similarly situated plaintiffs.

(j). All remaining Plaintiffs may be located at their place of employment, Newark Police Department, 31 Green Street, Newark, NJ, 07102.

4. Defendant is the City of Newark, City Hall, 920 Broad Street, Newark, NJ 07102. At all times relevant hereto, the City was an "employer" and a "public agency" within the meaning of Section 3 of the Act, 29 U.S.C. § 203.

**FACTS GIVING RISE TO A CAUSE OF ACTION**

5. On November 13, 1985, the Fair Labor Standards Act of 1938 was amended and enacted into law to specifically require the payment of overtime to public employees, such as plaintiffs, on and after April 15, 1986.

6. The City, acting by and through its duly authorized agents, was at all times relevant hereto fully aware of its obligations under the Act, as well as the regulations issued thercunder by the Secretary of Labor.

7. Notwithstanding the clear and explicit provisions of the Act, the City has refused to compensate plaintiffs in accordance with the provisions of the Act for overtime worked, at the appropriate rate (including longevity, stress pay, detective pay, hazardous duty pay, etc.) and failed to pay such compensation on regular pay periods, as described herein.

8. The City has likewise failed to maintain FLSA records and to make such records available to plaintiffs.

9. More specifically, the City has failed and refused to compensate plaintiffs for overtime in accordance with the provisions of Section 7 of the Act, 29 U.S.C. § 207, as well as the Regulations issued thereunder.

10. The City has failed and otherwise refused to compensate plaintiffs at the rate of one and one half times their regular rate of pay – as calculated in accordance with the FLSA as total remuneration for employment – for all hours worked in excess of 40 (29 C.F.R. §§ 778.200-.225) and to be paid such compensation on regular pay periods.

11. The City has likewise failed and refused to include time spent by police officers standing roll time as compensable work time and, as is applicable herein, as

overtime subject to the provisions of Section 7 of the Act, 29 U.S.C. § 207 and the regulations issued thereunder.

12. The City has failed and refused to record or otherwise keep accurate records reflecting hours of compensatory time that were earned by plaintiffs; specifically, the City has failed and refused to accurately “bank” compensatory time earned by plaintiffs and to record such earnings in FLSA-compensatory “time banks” in violation of Section 7 of the Act, 29 U.S.C. § 207 and the regulations issued thereunder and in breach of the collective bargaining agreements between the City of Newark and the Fraternal Order of Police, Newark Lodge No. 12 and the City of Newark and The Police Superior Officers’ Association of Newark, New Jersey, Inc.

13. The City has failed and refused to pay those plaintiffs who are no longer employed by the City for hours of compensatory time that were “banked” in plaintiffs’ FLSA-compensatory time banks at the time of discontinuation of employment, or since such time, in violation of Section 7 of the Act, 29 U.S.C. § 207, and the regulations issued thereunder.

14. The City has failed and unreasonably refused to permit plaintiffs to use compensatory time that has been “banked” in plaintiffs’ FLSA-compensatory “time banks” in violation of Section 7 of the Act, 29 U.S.C. § 207, the regulations issued thereunder and in breach of the collective bargaining agreement between the City of Newark and the Fraternal Order of Police, Newark Lodge No. 12 and is contrary to the terms set forth in the collective bargaining agreement between the City of Newark and The Police Superior Officers’ Association of Newark, New Jersey, Inc..

15. The City has failed to keep and maintain payroll records and data in violation of Section 11 of the Act, 29 U.S.C. § 211, as well as the regulations issued thereunder.

16. As a result of said violations of the Act by the City, each plaintiff has suffered damages.

17. The City's actions have been willful, intentional and/or deliberate and evidence a pattern of conduct designed to violate the Act and to thereby deprive plaintiffs of rights guaranteed to them by the Act.

18. Each of the actions complained of herein was taken by the City's officers, employees and agents who were acting on behalf of the City of Newark.

19. As a direct and immediate result of the City's willful, intentional and/or deliberate violations of the Act, it has become necessary for the plaintiffs to secure the services of counsel to research, investigate, institute and process this action against the City. The plaintiffs have employed the attorneys now appearing herein on their behalf and plaintiffs have already and will be required to expend reasonable attorneys' fees in the interests of this action and to expend other costs.

### **CAUSES OF ACTION**

#### **COUNT I** **LIEUTENANTS AND CAPTAINS** **ARE SUBJECT TO THE FAIR LABOR STANDARDS ACT**

20. Plaintiffs incorporate herein by reference the allegations set forth in paragraphs 1 - 19 above.

21. The City is required to pay its employees at least one and one half times their regular rate of pay for any and all hours worked in excess of 40 hours per week. 29 U.S.C. § 207(a)(1).

22. The City has improperly categorized employees holding the ranks of lieutenant and captain to be exempt, executive employees under the Act.

23. However, these employees are not exempt from the Act and they have been and continue to be improperly categorized as such.

24. The *Newark Police Department Rules and Regulations* applicable to all police officers, including superior officers, threaten disciplinary actions for rule violations, thus creating a significant likelihood of disciplinary suspension for infractions of these directives.

25. The *Newark Police Department Rules and Regulations* define “suspension” as “[t]he act of temporarily relieving a police officer, or a civilian employee, from performing his duties as a consequence of alleged dereliction of duty, or other violation of *Department Rules and Regulations*, or violation of a federal or state law or municipal ordinance.” *Newark Police Department Rules and Regulations* § 2:1.22.

26. Moreover, all police officers “shall be responsible for the duties assigned them and for their strict adherence to the *Rules and Regulations*, to written Directives, to procedures and to all lawful verbal Orders.” *Newark Police Department Rules and Regulations* § 3:2.2 (Conduct and Duty of Members; Responsibility of Police Officers).

27. The *Newark Police Department Rules and Regulations* provide the following rules regarding discipline:

#### **6:1 Penalty for Violations**

According to the nature and aggravation of the offense, any police officer or civilian employee of the Police Department who commits any illegal act, or, commits a violation of any Rule, Regulation, Procedure or Order governing the Police Department shall be subject to:

- (1) Reprimand
- (2) Fine
- (3) Suspension from duty
- (4) Reduction in rank
- (5) Dismissal

28. Lieutenants and captains are subject to partial week, non-safety disciplinary suspensions, with deductions in pay; specifically, there is an actual practice of making such deductions and/or the City's *Newark Police Department Rules and Regulations* create a significant likelihood of such deductions.

29. There are many examples of deductions having been made from the pay of lieutenants and captains based on non-safety disciplinary infractions. As such, captains and lieutenants are non-exempt employees under the Act. *See e.g.*, 29 C.F.R. § 541.118(a).

30. As non-exempt employees, plaintiffs are entitled to all benefits of the Act.

31. Lieutenants and captains are entitled to be compensated at the rate of one and one half times their rate of pay – as calculated in accordance with the FLSA as total remuneration for employment – for all hours worked in excess of 40 and to be paid such compensation on regular pay periods.

32. All lieutenants and captains are entitled to overtime, compensatory time, use of compensatory time and all other benefits provided by the Act, and as described herein.

WHEREFORE, plaintiffs demand judgment in their favor and damages as set forth below.

**COUNT II**  
**PLAINTIFFS ARE ENTITLED TO COMPENSATION**  
**FOR STANDING ROLL CALL**

33. Plaintiffs incorporate herein by reference the allegations set forth in paragraphs 1 - 32 above.

34. The City is required to pay its employees at least one and one half times their regular rate of pay for any and all hours worked in excess of 40 per week. 29 U.S.C. § 207(a)(1).

35. Police officers are required to work an eight-hour tour of duty.

36. In addition to eight-hour shifts, police officers are required to "stand roll call."

37. Standing roll call requires that the police officer report to work, in uniform, 15 minutes in advance of the commencement of his or her shift, to receive a "briefing" or summary of matters that may be pertinent to the employee's tour of duty.

38. Plaintiff police officers do not receive FLSA-required overtime compensation – calculated to include the total remuneration for employment – for attendance at roll call.

39. The City's failure to compensate plaintiff police officers for attendance at roll call constitutes a violation of the Act.

WHEREFORE, plaintiff police officers demand judgment in their favor and damages as set forth below.

**COUNT III**  
**THE CITY IS IN VIOLATION OF THE ACT**  
**FOR FAILURE TO PAY OVERTIME TO EMPLOYEES**  
**AT THEIR REGULAR RATE OF PAY**

40. Plaintiffs incorporate herein by reference the allegations set forth in paragraphs 1 - 39 above.

41. The City is require to pay its employees at least one and one half times their regular rate of pay for hours worked in excess of 40 hours per week. 29 U.S.C. § 207.

42. In accordance with the FLSA, an employee's regular rate of pay is calculated as all remuneration (29 C.F.R. §§ 778.200-.225) and this amount includes compensation such as shift/stress differentials, hazardous duty pay, detective/investigator allowance, court time and longevity pay.

43. At least since October 1990, the City has acknowledged its obligation to compensate plaintiffs as set forth in the preceding paragraph. Such payment was to be paid to plaintiffs on a quarterly basis pursuant to the Stipulation of Settlement, entered into by the City in *Lytwyn v. City of Newark, et. al*, Civil Action No. 89-1641 (MTB).

44. The City has repeatedly acknowledged this obligation, but has deliberately and willfully failed to compensate plaintiffs in accordance with the FLSA, the regulations and the Stipulation of Settlement.

45. Plaintiffs do not, and have not, received FLSA-require overtime compensation, calculated as set forth herein.

46. The City's failure to compensate plaintiffs at one and one half times their regular rate for overtime hours worked constitutes a violation of the Act.

WHEREFORE, plaintiff police officers demand judgment in their favor and damages as set forth below.

**COUNT IV**  
**THE CITY IS IN VIOLATION OF THE ACT**  
**FOR FAILURE TO RECORD/DISTRIBUTE/PAY**  
**COMPENSATORY TIME**

47. Plaintiffs incorporate herein by reference the allegations set forth in paragraphs 1 -- 46 above.

48. At all times relevant to the claims set forth herein, the City of Newark and the Newark Fraternal Order of Police, Lodge No. 12 were parties to a collective bargaining agreement. That agreement sets forth the terms and conditions of employment for plaintiffs.

49. Pursuant to the Act and in accordance with the terms and conditions set forth in the applicable collective bargaining agreement, the City is permitted to compensate plaintiffs for overtime hours worked by way of compensatory time at a rate of not less than one and one half hours for each hour of employment for which overtime compensation is required. 29 U.S.C. § 207(o).

50. Compensatory time is to be maintained by the City for each employee in an FLSA "time bank."

51. In accordance with the FLSA, the City is not permitted to accumulate compensatory time for hours worked in excess of 480 hours. 29 U.S.C. § 207(o)(3)(A).

52. All overtime hours in excess of 480 hours are to be paid at the employee's regular rate of pay – calculated to include the total remuneration for employment – as earned by the employee at the time the employee receives such payment.

53. The City is, and at all relevant times was, responsible for keeping detailed records of compensatory time earned by employees pursuant to Section 7(o) of the Act. 29 C.F.R. § 553.50.

54. The City has intentionally failed or otherwise refused to:

- (a) provide compensatory time off to employees for overtime worked and has otherwise failed to offer any remuneration for such time worked;
- (b) maintain records of compensatory time for employees who worked overtime;
- (c) remunerate employees in cash for overtime hours earned in excess of 480 on regular pay periods; and
- (d) compensate employees at their regular rate of pay (and in a timely manner) as required by the FLSA – calculated to include the total remuneration for employment – in those instances where cash payment is made to employees for overtime hours worked.

55. As a result of the City's willful conduct, employees are not being compensated in accordance with the Act.

WHEREFORE, plaintiffs demand judgment in their favor and damages as set forth below.

**COUNT V**  
**THE CITY IS IN VIOLATION OF THE ACT**  
**FOR FAILURE TO PAY ACCRUED COMPENSATORY TIME**  
**UPON AN EMPLOYEE'S TERMINATION FROM EMPLOYMENT**

56. Plaintiffs incorporate herein by reference the allegations set forth in paragraphs 1 – 55 above.

57. As set forth in the preceding Count, the City is permitted to compensate plaintiffs for overtime hours worked by way of compensatory time at a rate of not less than one and one-half hours for each hour of employment for which overtime compensation is required up to 480 hours.

58. Compensatory time is to be maintained by the City for each employee in an FLSA "time bank."

59. In accordance with Section 7(o)(4) of the Act:

An employee who has accrued compensatory time off . . . shall, upon termination of employment, be paid for the unused compensatory time at a rate of compensation not less than –

- (A) the average regular rate received by such employee during the last 3 years of the employee's employment, or
- (B) the final regular rate received by the employee, whichever is higher.

29 U.S.C. § 207(o)(4).

60. In addition to willfully failing to adequately maintain records of the compensatory time "banked" by employees, the City failed and otherwise refused to pay the unused compensatory time to employees who voluntarily or involuntarily discontinued employment with the City.

61. The City's conduct is in direct violation of the Act.

WHEREFORE, plaintiffs demand judgment in their favor and damages as set forth below.

**COUNT VI**  
**THE CITY IS IN VIOLATION OF THE ACT**  
**FOR FAILURE TO PERMIT EMPLOYEES**  
**TO USE COMPENSATORY TIME OFF**

62. Plaintiffs incorporate herein by reference the allegations set forth in paragraphs 1 – 61 above.

63. As set forth in the preceding Counts, the City is permitted to compensate plaintiffs for overtime hours worked by way of compensatory time at a rate of not less than one and one-half hours for each hour of employment for which overtime compensation is required up to 480 hours.

64. Compensatory time is to be maintained by the City for each employee in an FLSA “time bank.”

65. As set forth in Section 7(o)(5) of the Act:

An employee of a public agency which is a State, political subdivision of a State, or an interstate governmental agency –

- (A) who has accrued compensatory time off authorized to be provided under paragraph (1), and
- (B) who has requested the use of such compensatory time, shall be permitted by the employee's employer to use such time within a reasonable period after making the request if the use of the compensatory time does not unduly disrupt the operations of the public agency.

29 U.S.C. § 207(5).

66. Plaintiffs have repeatedly requested the right to use compensatory time off.

67. Although plaintiffs' requests to use compensatory time off did not unduly disrupt the operations of the City, the City unlawfully refused to permit plaintiffs the right to use such time.

68. The City's conduct is in direct violation of the Act.

WHEREFORE, plaintiffs demand judgment in their favor and damages as set forth below.

**COUNT VII**  
**THE CITY IS IN VIOLATION OF THE ACT**  
**FOR FAILURE TO MAINTAIN THE REQUIRED RECORDS**

69. Plaintiffs incorporate herein by reference the allegations set forth in paragraphs 1 – 68 above.

70. The FLSA requires detailed record-keeping by the City and such record-keeping is governed by 29 U.S.C. § 211.

71. The City was required to "make, keep and preserve such records of the persons employed by [it] and of the wages, hours, and other conditions and practices of employment maintained by [the City], and shall preserve such records. . ." 29 U.S.C. §211(c).

72. The applicable regulations include a requirement to "maintain and preserve payroll or other records," setting forth the required biographical and personal information, as well as detailed records of hours worked and wages earned. 29 C.F.R. § 516.2.

73. The City has deliberately, intentionally and willfully failed to maintain records as required by the FLSA.

74. Plaintiffs have suffered injuries as a result of this conduct.

75. In addition, the City is and was required to keep additional records pertaining to "banked" compensatory time.

76. Such additional records include, *inter alia*, the number of hours of compensatory time earned, the number of hours of compensatory time used each work week, the number of hours of compensatory time compensated in cash, etc.

77. The City has deliberately, intentionally and willfully failed to maintain records as required by the FLSA.

78. Plaintiffs have suffered injuries as a result of this conduct.

79. As a result of the City's repeated, unlawful, wrongful and willful violations of the aforesaid provisions of the Act, the City is liable to plaintiffs in the amount of unpaid overtime compensation as will be determined at trial, together with an additional amount of liquidated damages, as provided for by Section 16(b) of the Act, 29 U.S.C. § 216(b).

80. The City's failure to maintain records shifts the burden of proof with respect to all claims asserted in this action to defendant City.

WHEREFORE, plaintiffs demand judgment in their favor and damages as set forth below.

**PRAYER FOR RELIEF**

WHEREFORE, all plaintiffs listed herein, and in and on behalf of any and all additional plaintiffs who may determine to join this action, respectfully pray that this Honorable Court:

- (a) Assume jurisdiction over this matter pursuant to Section 16(b) of the Act, 29 U.S.C. § 216(b);
- (b) Enter an Order declaring the conduct of the City to be in violation of the Fair Labor Standards Act;
- (c) Enter an Order for judgment in favor of the plaintiffs and against the City of Newark in an amount equal to the wrongfully withheld compensation due plaintiffs, plus interest. Specifically, plaintiffs seek payment for any and all back wages owed to plaintiffs, including all hours worked by plaintiffs and, where appropriate, compensation at the FLSA rate for overtime pay of one and one-half times the total remuneration for employment, plus interest;
- (d) Enter an Order permanently enjoining, restraining and prohibiting defendant from further violations of the Act;
- (e) Enter an Order declaring that the conduct of the City of Newark in failing to pay compensation constituted a “willful” violation of the Act and, therefore, directing that defendant pay liquidated damages in an amount equal to the amount of wrongfully withheld overtime compensation as will be determined and as set forth herein;
- (f) Enter an Order directing that defendant City of Newark pay to plaintiffs all their reasonable attorneys’ fees, expenses and the costs of research, investigation, initiation, maintenance and prosecution of this cause of action; and

(g) Award plaintiffs such other and further relief as may be just, necessary and proper.

Respectfully submitted,



PETER H. DEMKOVITZ, ESQUIRE

MARKOWITZ & RICHMAN  
24 Wilkins Place  
Haddonfield, NJ 08033  
(856) 616-2930

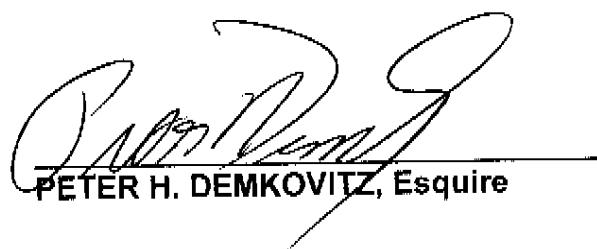
121 S. Broad Street, Suite 1100  
Philadelphia, PA 19107  
(215) 875-3100

Dated: **February 4, 2004**

**CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the Second Amended Complaint of *Michael Christy, et al. v. City of Newark* – Civil Action No. 02-CV-4687 were served on the following by via First Class Mail on February 4, 2004:

Pamela Mosley Greesham, Esquire  
Newark, Department of Law  
920 Broad Street  
Newark, NJ 07102



PETER H. DEMKOVITZ, Esquire